

ORIGINAL



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INVESTIGATION)
ON THE COMMISSION'S OWN MOTION, UNDER)
INDIANA CODE § 8-1-2-72, INTO ANY AND ALL)
MATTERS RELATING TO THE COMMISSION'S)
MIRRORING POLICY ARTICULATED IN)
CAUSE NO. 40785 AND THE EFFECT OF THE)
FCC'S MAG ORDER ON SUCH POLICY,)
ACCESS CHARGE REFORM, UNIVERSAL)
SERVICE REFORM, AND HIGH COST OR)
UNIVERSAL SERVICE FUNDING)
MECHANISMS RELATIVE TO TELEPHONE)
AND TELECOMMUNICATIONS SERVICES)
WITHIN THE STATE OF INDIANA)

CAUSE NO. 42144

APPROVED: DEC 27 2001

BY THE COMMISSION:

Camie J. Swanson-Hull, Commissioner

Priscilla J. Fossum, Administrative Law Judge

On November 28, 2001, in Cause No. 42135¹, the Indiana Exchange Carrier Association, Inc. ("INECA") filed its Verified Petition ("Petition") requesting – in part – an investigation of the impact of the Federal Communications Commission ("FCC") Second Report and Order and Further Notice of Proposed Rulemaking *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-166, FCC 01-304 (November 8, 2001)("MAG Order"). INECA specifically requested that the Commission investigate its mirroring policies adopted in various Orders in Cause No. 40785. On December 17, 2001, and in Cause No. 42135, AT&T Communications of Indiana GP and TCG Indianapolis ("AT&T") filed its Petition to Intervene, which the Commission granted, and Response. In its Response, AT&T did not object to the investigation that INECA requested but argued that any investigation should include "a comprehensive review of the issues and circumstances associated with access charge reforms for federal rate-of-return companies." Response, p. 2.

The Commission concurs with both INECA and AT&T that that a comprehensive investigation into the mirroring policy and other related issues addressed in our Orders in Cause No. 40785 should be undertaken and completed on an expedited basis.

1. **Jurisdiction.** The Commission has previously determined in various Orders in Cause No. 40785 that we have jurisdiction over the providers of telecommunication services within the State of Indiana and the broad subject matter of this proceeding under several statutory sections including Indiana Code §§ 8-1-2-58, 8-1-2-59, 8-1-2-69, and 8-1-2.6-3.

¹ The Commission issues our Order in Cause No. 42135 concurrently with this Order.

Additionally, we found authority under the federal Telecommunications Act of 1996. As noted in both INECA's Petition and AT&T's Response in Cause No. 42135, the Commission addressed issues in Cause No. 40785 that will be affected by the MAG Order. Under Indiana Code § 8-1-2-72, the Commission may, at any time, upon notice and opportunity to be heard, rescind, alter or amend our Orders issued in Cause No. 40785. Therefore, the Commission finds that we have jurisdiction over the subject matter of this Cause.

2. **Commission Investigation.** As we stated in our Order in Cause No. 42135, the Commission agrees with INECA that the MAG Order significantly impacts the "rate design and cost recovery mechanisms related [to] the interstate access charge structure required for incumbent [rate-of-return] ROR companies." Petition, ¶ 3. Likewise, the Commission agrees that our Orders in 40785 require that intrastate charges mirror those interstate charges. Therefore, the Commission finds that an investigation into exactly if, how and when our mirroring policy should be changed because of the MAG Order is appropriate.

The Commission also agrees with AT&T's position that a comprehensive investigation into the mirroring policy could be undertaken and completed on an expedited basis. Furthermore, the Commission agrees that such expedited investigation should "continue the work started in Cause No. 40785." Response, p. 3. While the Commission cannot anticipate every issue that will arise out of a general investigation of small companies and recovery of unusually high costs, at this time we lay out a broad list of issues, some of which have already been discussed by the parties in Cause No. 42135. To date, the Commission has developed the Indiana High Cost Fund and the Transitional DEM Weighting Fund, which are used to support small companies. An important question to analyze is whether a company must show a demonstration of need to obtain these funds. In Cause No. 40785, the Commission also raised issues such as whether the funds should be competitively neutral, combined or have one administrator. The Commission finds that these issues should again be investigated.

Both parties in Cause No. 42135 raised the issue of a state universal service fund, and in fact, most states have a state universal service fund. The Commission finds that this will be an important issue in this broad investigation initiated by the Commission. Prior to a creation of a state universal service fund, we ask parties to consider what type of legislative authority the Commission needs to create such a fund in addition to any legal issues regarding any overlap with the Federal Universal Service Fund. Prior to the creation of a state universal service fund, the Commission should resolve such issues as which entities contribute to the fund and if any demonstration of need is required to obtain funds, and the Commission desires the assistance of interested parties in making such determinations. The Commission also asks the parties to recommend a mechanism to transition the existing Indiana High Cost Fund and the Transitional DEM Weighting Fund into one single state universal service fund. The issues listed are not intended to be exhaustive or immutable, and the Commission will ask the parties to develop a list of specific issues after an initial Prehearing Conference.

Finally, the Commission intends that this investigation proceed on an expedited basis. As noted in our Order in Cause No. 42135, the aspects of the MAG Order most likely to impact INECA's member companies will not occur until July 1, 2002. The Commission believes that a comprehensive investigation into the relevant issues can be completed in time to address any

negative impact of the MAG Order. The Commission is committed to resolving the issue of continuing the mirroring policy – at the least – by that time. The Commission therefore requests the cooperation of the parties in resolving all of the issues to be addressed in this Cause on an expedited basis.

3. **Parties.** The Commission welcomes the involvement of all interested parties in this investigation. As noted above, both INECA and AT&T have already indicated the willingness to participate in this investigation. The Commission also will notify all the other parties from Cause No. 40785 of this investigation.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. On the Commission's own motion, a formal and expedited investigation is hereby commenced in accordance with Indiana Code § 8-1-2-72, regarding the mirroring policy adopted by the Commission in Cause No. 40785 and that expedited investigation will also address other issues raised in Cause No. 40785, including but not limited to: access charge reform; universal service reform; the Indiana High Cost Fund; and the Transitional Dial Equipment Minutes ("DEM") Weighting Fund.

2. A prehearing conference shall be held in this Cause on Tuesday, January 29, 2002, at 1:30 p.m. EST, in Room E-306 of the Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana.

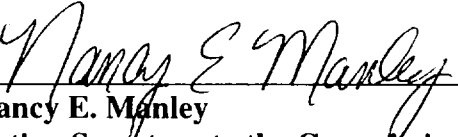
3. This Order shall be effective on and after the date of its approval.

McCARTY, SWANSON-HULL AND ZIEGNER CONCUR;

HADLEY and RIPLEY ABSENT:

APPROVED: DEC 27 2001

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Nancy E. Manley
Acting Secretary to the Commission